

September 30, 2013

Brian Darby, Treasurer
Libertarian Party of California
770 L Street, Suite 950
Sacramento, CA 95814-336

Re: Your Request for Informal Assistance
Our File No. I-13-114

Dear Mr. Darby:

This letter responds to your request for advice on behalf of the Libertarian Party of California (the “Libertarian Party”) regarding the campaign provisions of the Political Reform Act (the “Act”).¹

QUESTIONS

Are the following monetary payments made to the Libertarian Party county committees reportable contributions under the Act?

- (1) Payments of \$5,000 made on June 5, 2013 for legal fees for a lawsuit challenging Proposition 14; and
- (2) Payments totaling \$108,000 on various dates from March 22, 2013 through August 27, 2013 for call center expenses used to reach out to register Libertarians asking them to become paying members.

CONCLUSION

The majority of your questions relate to past conduct and the Fair Political Practices Commission (“FPPC”) does not provide advice regarding past conduct. We can, however, provide some general information regarding reporting requirements under the Act that may be of assistance to you in the future.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

You are the Treasurer for the Libertarian Party. You recently received a call from the Secretary of State's office ("SOS") inquiring about "large donations" that were made to three of your county parties. The SOS employee stated that "no filings were found listing those donations."

You informed us that the county parties have received cash payments toward legal fees for a lawsuit against Proposition 14 and for a call center "to telephone registered Libertarians and ask them to become paying members."

The lawsuit, *Rubin v. Bowen*, case number RG11605301, was filed on November 21, 2011 in Alameda County against Secretary of State Debra Bowen. The suit, which challenges the constitutionality of Proposition 14, was filed by numerous plaintiffs including the Libertarian Party of California.

Proposition 14, which passed in June of 2010, is informally called the 'Top Two' law. Under Proposition 14, instead of a separate primary ballot for each party, all candidates for state and congressional office will be listed on the same ballot and every voter can choose from among all those candidates. The top two finishers in the June primary election, regardless of their party affiliation, will then appear on the November General Election ballot, essentially making November a run-off election.

The payments received by the Libertarian Party county committees are as follows:

(1) On June 5, 2013, the Alameda county committee received \$5,000 to pay for legal fees involving a lawsuit challenging Proposition 14.

(2) On March 22, 2013, the Monterey county committee received \$10,000 and on June 3, 2013 received \$8,000 to pay for a call center to telephone registered Libertarians and ask them to become paying members.

(3) On July 2, 2013 the Sacramento county committee received \$40,000 and on August 2, 2013 it received \$50,000 to pay for a call center to telephone registered Libertarians and ask them to become paying members.

You ask whether the payments are reportable contributions under the Act.

ANALYSIS

The majority of your questions relate to past conduct. The Commission's longstanding policy, codified in regulations, is to refrain from providing officials with advice involving past conduct. (Regulation 18329(b)(8)(a), 18329(c)(4)(A).)

The Commission provides advice as to prospective conduct only, the rationale being to encourage parties to seek advice before they act in possible violation of the Act's provisions. In addition, past conduct could possibly be the subject of a complaint or an enforcement action if it was in violation of the Act's campaign disclosure provisions, and therefore, it is the policy of the Commission not to advise on conduct that has already occurred.

We can, however, provide some general information concerning campaign-reporting provisions of the Act that may assist you in future filings.

Campaign Disclosure Provisions Generally

The campaign disclosure provisions of the Act require "committees" to file a statement of organization and periodic reports disclosing contributions received and expenditures made. (Section 84100 *et seq.*) Pursuant to Section 82013, a "committee" is any person or organization that receives *contributions totaling \$1,000* or more in a calendar year (Section 82015 defines "contribution" as a payment made for *political purposes*), makes *independent expenditures totaling \$1,000* or more in a calendar year, or makes *contributions of \$10,000 or more* in a calendar year.

Because the Libertarian Party of California and its county committees meet these thresholds, they are required to file statements of organization and file periodic campaign reports as required by the Act.

Contributions:

The term "contribution" is defined by Section 82015 and Regulation 18215 to include "any payment made for political purposes." (Regulation 18215(a).)

Under Regulation 18215(a), a payment is made for political purposes if it is:

"(1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or

"(2) Received by or made at the behest of the following or any agent thereof:

"(A) A candidate;

"(B) A controlled committee;

"(C) *An official committee of a political party, including a state central committee, county central committee, assembly district committee or any subcommittee of such committee; or*

“(D) An organization formed or existing primarily for political purposes including, but not limited to, a political action committee established by any membership organization, labor union or corporation.” (Emphasis added.)

Regulation 18215 classifies every payment that a political party receives as a contribution, unless a specific exception applies. Underlying this rule is the theory that political party committees, like similarly treated candidates and PACs, are organized for partisan purposes and therefore inherently “political.”

Therefore, absent an exception, cash payments or in-kind payments such as staff time or office space, or administrative costs of operating a committee made to the Libertarian Party of California and its county committees are contributions and subject the Act’s campaign disclosure requirements. (*Whipkey* Advice Letter, A-97-045; *Sutton* Advice Letter A-97-168.) Some examples of exceptions to the definition of “contribution” are found in Regulation 18215(c)(2), which exempts voluntary personal services and Regulation 18215(c)(3), which exempts a payment made by an occupant of a home or office for costs related to any meeting or fundraising event of \$500 or less, exclusive of the fair rental value of the premises. Whether these exceptions apply must be determined on a case-by-case basis.

Expenditures

Section 82025 defines expenditure as “a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes.”

Regulation 18225, implementing Section 82025, states in pertinent part:

“(a) An expenditure is any monetary or nonmonetary payment made for political purposes. A payment is made for political purposes if it is:

“(1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or

“(2) Made by:

“(A) A candidate, unless it is clear from surrounding circumstances that the payment was made for personal purposes unrelated to his or her candidacy or status as an office holder;

“(B) A controlled committee;

“(C) *An official committee of a political party, including a state central committee, county central committee, assembly district committee or any subcommittee of such committee; or*

“(D) An organization formed or existing primarily for political purposes as defined in subsection (a)(1), including but not limited to a political action committee established by any membership organization, labor union or corporation.” (Emphasis added.)

Regulation 18225 classifies every monetary or nonmonetary payment that a political party makes as an expenditure, unless a specific exception applies.

In addition to regulatory language citing various exceptions to the definition of “contribution” and “expenditure,” there have been other narrow exceptions specified in a prior Commission opinion and in case law.

For instance, in considering whether a candidate’s litigation expenses were reportable expenditures under the Act, we note that the Commission has distinguished litigation challenging the results of an election from litigation challenging the constitutionality or legality of a statute enacted by an initiative. (*In re Buchanan* (1979) 5 FPPC Ops. 14.) There, the Commission determined that litigation expenses incurred by a candidate in maintaining his status as a candidate were reportable expenditures under the Act because it was related to his status as an office holder.

In addition, the court in *Yes on Measure A v. City of Lake Forest*, 60 Cal.App.4th, 620 (1997) held that a city’s expenditures incurred in association with a pre-election challenge to a keep a local initiative off the general election ballot (alleging it violated various state planning laws) did not trigger the reporting requirements of the Political Reform Act of Act.

However, neither of these cases applies to political party committees, and neither addresses the parts of the Act’s regulations that classify all payments to and from political parties as contributions and expenditures. (Regulations 18215(a)(2)(C) and 18225(a)(2)(C).)

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl